



South Dakota One Call Notification Board

Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

August 19, 2003

RECEIVED

OCT 08 2003

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Dan Bell
Midcontinent Communications
3507 S. Duluth Avenue
Sioux Falls, SD 57104

Northern Plains Landscaping
301 N. Holiday Avenue
Sioux Falls, SD 57103

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on August 14, 2003, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC03-005 filed by Midcontinent Communications against Northern Plains Landscaping.

By a unanimous vote of the Enforcement Committee, the recommended resolution to the alleged violations included in this complaint was determined to be as follows:

Alleged Violation of SDCL 49-7A-5

The Enforcement Committee found that there was insufficient evidence to indicate that Northern Plains Landscaping was involved in excavation activity that was a statutory violation.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may reject the recommendation of the Enforcement Committee by requesting a formal hearing on either or both violations alleged in this complaint. Your decision should be reflected in the shaded section of the attachment. Failure to respond to this notice will be considered as concurrence with and acceptance of recommendations of the Enforcement Committee in the matter of resolution to complaint OC03-003. Please return the signed form by September 5, 2003 to:

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve either of both of the allegations alleged in OC03-003.. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18.

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. You are strongly urged to reply to this Notice in the time frame described above and to obtain the advise of counsel should you have any legal questions.

Sincerely,

Larry L. Englerth
Executive Director

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Northern Plains Landscaping
301 N. Holiday Avenue
Sioux Falls, SD 57103

2. Article Number
(Transfer from service label)

7002 2410 0006 0451 6710

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-Z-0985

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *Chris Schull* ☐ Agent ☐ Addressee

B. Received by (Printed Name)**C. Date of Delivery**

8-21

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No**3. Service Type**

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Northern Plains Landscaping
47408 278th Street
Worthing, SD 57077

2. Article Number
(Transfer from service label)

7002 1000 0005 3471 1438

PS Form 3811, August 2001

Domestic Return Receipt

2ACPRI-03-Z-0985

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *Chris Schull* ☐ Agent ☐ Addressee

B. Received by (Printed Name)**C. Date of Delivery**

7/14/03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No**3. Service Type**

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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ENFORCEMENT COMMITTEE ACTION **SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

FOR ENFORCEMENT COMMITTEE USE ONLY

REMARKS:

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

At an Enforcement Committee of the South Dakota One Call Notification Board meeting held on August 14, 2003, the Complaint filed by Midcontinent Communications and the associated response from Northern Plains Landscaping were reviewed. It was evident from the damage to an underground facility that an excavator had taken some action to cause the damage. The only supporting documentation that identified Northern Plains Landscaping as that excavator was a copy of a locate request for the address of the damage. The response from Northern Plains Landscaping identified the excavator planting the trees as Family Tree Company.

Committee members expressed concern that Family Tree Company was excavating under a ticket issued in the name of Northern Plains Landscaping and requested that the Executive Director for the South Dakota One Call Board contact Northern Plains Landscaping to insure that they understood the statute and administrative rules.

Midcontinent Communications does have the option to file a complaint against Family Tree Service.

RECOMMENDATION

FOR ENFORCEMENT COMMITTEE USE ONLY

NO VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Enforcement Committee found insufficient evidence to indicate that Northern Plains Landscaping was involved in excavation activity that was a statutory violation.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

COMMENTS:

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-005

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-005.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-005. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-005.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-005. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO VIOLATION(S) ALLEGED IN COMPLAINT NUMBER OC03-005. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

IF YOU DESIRE TO REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 5, 2003.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

FAILURE TO ANSWER THIS RESOLUTION TO COMPLAINT OC03-005 WILL BE CONSIDERED AS ACCEPTANCE OF THE COMMITTEE RESOLUTION OF THE COMPLAINT. PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-005, VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION



Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-003.

Signature

ENFORCEMENT COMMITTEE ACTION

FOR ENFORCEMENT COMMITTEE USE ONLY

REMARKS:

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

At an Enforcement Committee of the South Dakota One Call Notification Board meeting held on August 14, 2003, the Complaint filed by Midcontinent Communications and the associated response from Northern Plains Landscaping were reviewed. It was evident from the damage to an underground facility that an excavator had taken some action to cause the damage. The only supporting documentation that identified Northern Plains Landscaping as that excavator was a copy of a locate request for the address of the damage. The response from Northern Plains Landscaping identified the excavator planting the trees as Family Tree Company.

Committee members expressed concern that Family Tree Company was excavating under a ticket issued in the name of Northern Plains Landscaping and requested that the Executive Director for the South Dakota One Call Board contact Northern Plains Landscaping to insure that they understood the statute and administrative rules.

Midcontinent Communications does have the option to file a complaint against Family Tree Service.

RECOMMENDATION

FOR ENFORCEMENT COMMITTEE USE ONLY

NO VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Enforcement Committee found insufficient evidence to indicate that Northern Plains Landscaping was involved in excavation activity that was a statutory violation.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

COMMENTS:

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-005

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-005.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-005, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-005.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-005, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO VIOLATION(S) ALLEGED IN COMPLAINT NUMBER OC03-005. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

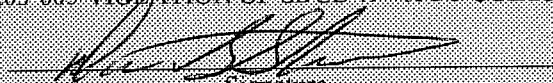
IF YOU DESIRE TO REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 5, 2003.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

FAILURE TO ANSWER THIS RESOLUTION TO COMPLAINT OC03-005 WILL BE CONSIDERED AS ACCEPTANCE OF THE COMMITTEE RESOLUTION OF THE COMPLAINT. PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION


Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-003.

Signature